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U.S.D.C. - Atlanta

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

APR 07 2011

JAMES H. HATHEN, Clerk
By  Deputy Clerk

UNITED STATES OF AMERICA,

Respondent

v.

Case No. 1:11 CR-00136-CAP-AJB

JOSHUA MCCULLOUGH, et al.

Defendant

MOTION TO REMOVE DETENTION ORDER
AND REQUEST FOR BOND

JOSHUA McCULLOUGH hereby moves, pursuant to 18 U.S.C. § 3142, to remove the temporary detention order of April 5, 2011. Mr. McCullough seeks an order granting pretrial release pending resolution of the charges in his criminal case.

Mr. McCullough has been charged in an indictment with Count 1, knowingly and intentionally to manufacture, distribute, and possess with the intent to distribute, a controlled substance, said conspiracy involving at least one (100) marijuana plants, in violation of Title 21, United States Code, Sections 841 (b) (1) (vii) and 846, and Count 2, knowingly and intentionally possess with the intent to distribute at least one hundred (100) marijuana plants, a Schedule I controlled substance in violation of Title 21, United States Code, Sections 841 (a) (1), 841 (b) (1) (B) (vii) and Title 18, United States Code, Section 2. Mr. McCullough is also charged with Count 3, knowingly possess firearms in furtherance of drug trafficking crimes, as describe in Count One and Count Two. There is also a forfeiture provision in the indictment.

Mr. McCullough is a United States citizen and is presently in federal custody at the courts insistence. He is a natural born citizen and has always been a resident of the United States. He resides in Henry County Georgia with his wife and his teenage children. Mr. McCullough has

been the managing partner of a business located in Stockbridge, Georgia for the past eight years and has no prior convictions.

A. Reasons to support pretrial release

1. Citizen of the United States and family ties

The Defendant is not a flight risk. He is a citizen of the United States and has no ties outside of this country. The Defendant has three dependants who are natural born United States citizens. Additionally, his wife has a part time job and is not the main support of the family. It would be most helpful for Mr. McCullough to work to help support the family.

2. Employment

Mr. McCullough has been the managing partner of Stockbridge Billiards in Stockbridge, Georgia for the past eight years, and this is the main source of income for him and his family.

B. Statutory Provisions for bond

The facts that should be considered in determining whether to release a defendant pending trial are set forth in 18 U.S.C. § 3142(g) and include (1) the nature and circumstances of the offense charged, (2) the weight of the evidence against the person, (3) the history and characteristics of the person including a) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings, b) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of a sentence for an offense under federal, state, or local law, and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

1. Nature and Circumstances of the Offense Charged

Mr. McCullough is charged with others in possessing over one hundred (100) marijuana plants and several firearms. All of the plants in this case were located in other locations separate from the Defendant. The plants were not located at the Defendant's home or place of employment. Mr. McCullough is an avid hunter and a majority of the guns located in this case were used for the hunting of game or had been gifts from friends and relatives.

2. Weight of the Evidence against Mr. McCullough

All evidence in this case as to Mr. McCullough is circumstantial.

3. History and Characteristics of the Person

Mr. McCullough has no history with this court or any other court. Mr. McCullough has been a law abiding citizen his entire life and has been a respected member of the business community in Henry County for over eight (8) years. He is the father of three teenagers aged thirteen (13), thirteen (13) and fifteen (15) and well as a loving spouse to his wife Danielle McCullough.

Mr. McCullough would be a great help to his wife and three children if he were allowed to remain on bond and assist the family by continuing to work. He can do so through a number of restrictions that would ensure the safety of the community. Such conditions include but are not limited to house arrest, curfew, electronic monitoring, and daily reporting to pretrial services officers.

4. Danger to the community

Based on the foregoing information there are enough restrictions that can be imposed that would provide security to the community. However, there is no risk of flight and there is no danger to the community in light of Mr. McCullough's clean criminal history. Mr. McCullough wants to raise his family in a good environment and be able to provide for his family.

C. Conditions of Bond

To assure appearance and the safety of the community the court may require that a defendant meet certain conditions which may include but are not limited to (1) the defendant remain in the custody of a designated person, who agrees to supervise him if the person is able reasonably to ensure that the defendant will appear and not pose a danger to the community; (2) maintain employment or actively seek same; (3) abide by specified restrictions on associations, travel or residence; (4) report on a regular basis to a designated law enforcement authority; (5) comply with a curfew; (6) submit to "house arrest" and/or electric monitoring and lastly; (6) satisfy any other conditions reasonably necessary to assure appearance. Mr. McCullough is willing to comply with all of these conditions including surrendering any and all passports the conditions are reasonable and likely to ensure that the Defendant will not be a danger to the community or a flight risk. If Mr. McCullough does not comply with all of the conditions of his bond, he will expose his wife and child to financial consequences and emotional hardship. These circumstances establish another incentive for Mr. McCullough to abide by any and all conditions of bond set by this Honorable Court.

/s/ Ricky W. Morris, Jr.

Ricky W. Morris, Jr.,
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Attorney for Defendant Joshua McCullough

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JOSHUA MCCULLOUGH

Defendant

CERTIFICATE OF SERVICE

I hereby certify this day that I have served opposing counsel with a true and correct copy of the foregoing by depositing a copy of same in the United States mail with adequate postage affixed thereto addressed as follows:

United States District Attorney
Northern District of Georgia
Richard B. Russell Building, Suite 600
75 Spring Street, SW
Atlanta, Georgia 30303

And further certify that I have served all parties of interest through electronic mail through the Court's EMC/EFC service list in the above-referenced matter.

This 5th day of April, 2011

/s/ Ricky W. Morris, Jr. _____
Ricky W. Morris, Jr.,
Georgia Bar No. 52510

Attorney for Defendant Joshua McCullough

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